UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROCKWELL MINING, LLC, Petitioner, v. NATIONAL LABOR RELATIONS BOARD, Respondent.	)	Case No: 18-1329 NLRB Case Nos. 09-CA-216001; 09-RC-202389

PETITION FOR REVIEW OF DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure and 29 U.S.C. § 160(f), Rockwell Mining, LLC ("Petitioner") hereby petitions the Court for review of the entirety of the following Decision and Orders issued by the National Labor Relations Board ("Respondent").

1. The Decision and Order issued by Respondent on December 11, 2018 in Case 09-CA-216001, reported at 367 NLRB No. 46, a copy of which is attached as Exhibit A.

2. The Order issued by Respondent on June 21, 2018 in Case 09-RC-202389, a copy of which is attached as Exhibit B. The Order concerns Petitioner's Request for Review of the Regional Director's Supplemental Decision and Certification of Representative issued on February 16, 2018 by Regional Director Garey Edward Lindsay, which is attached as Exhibit C.

Dated: December 12, 2018

Respectfully submitted,

/s/Anna M. Dailey
/s/Forrest H. Roles
/s/Jacqueline N. Rau

Anna M. Dailey (WVSB #4525)
Forrest H. Roles (WVSB #3162)
DINSMORE & SHOHL LLP
P.O. Box 11887
Charleston, West Virginia 25339-1887
(304) 357-0900
(304) 357-0919 (Facsimile)
anna.dailey@dinsmore.com
forrest.roles@dinsmore.com

and

Jacqueline N. Rau (OH #89899)
DINSMORE & SHOHL LLP
191 Nationwide Blvd, Suite 300
Columbus, Ohio 43215
(614) 628-6883
(614) 628-6890 (Facsimile)
jacqueline.rau@dinsmore.com

Counsel for Petitioner

Rockwell Mining LLC *and* United Mineworkers of America, AFL–CIO, Region 2, District 12. Case 09–CA–216001

December 11, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on March 5, 2018, by United Mineworkers of America, AFL–CIO, Region 2, District 12 (the Union), the General Counsel issued the complaint on June 29, 2018, alleging that Rockwell Mining LLC (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it and to furnish relevant information following the Union's certification in Case 09–RC–202389. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On August 15, 2018, the General Counsel filed a Motion for Partial Summary Judgment and a memorandum in support. On August 22, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Summary Judgment

The Respondent admits its refusal of the Union's requests to bargain and to provide information, but contests the validity of the Union's certification based on its objections to the election in the underlying representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.[1] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburg Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing with respect to many of the items in the Union's request for information. The complaint alleges, and the Respondent admits, that on February 28, 2018, the Union requested the following information:

1. A roster of all bargaining unit employees on the payroll from January 1, 2016, to present, including their:

   i. addresses
   ii. email addresses
   iii. phone numbers
   iv. job title
   v. mine and/or facility designation
   vi. daily rate of pay and
   vii. date of hire and/or discharge

2. Copies of all health, life and other insurance policies in effect for all bargaining unit employees.
3. Copies of any and all individual contracts of employment for any and all bargaining unit employees.
4. Copies of any pension plan, savings plan and/or 401(k) plans in effect for all bargaining unit employees.
5. For calendar year 2016–2017 and to date, provide a quarterly distribution of coal production, hours and employment by type of operation:

   A. Surface mines
   B. Common facilities

6. Distribution of hours should be provided on the following basis:

   A. Straight time hours
   B. Daily overtime hours
   C. Saturday hours
   D. Sunday hours
   F. Day shift hours
   G. Evening shift hours
   H. Midnight shift hours

[1] Chairman Ring did not participate in the underlying representation proceeding. He agrees with his colleagues that the Respondent has not raised any litigable issue in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

EXHIBIT A

7. For calendar year 2016–2017 and to date, provide the distribution of bargaining unit employees by grade and job classification.

A. Employees at surface mines

B. Employees at common facilities

8. Provide the job description, including the duties and minimum qualifications, for each job classification listed above.

9. For calendar year 2016–2017 and to date, provide a distribution of employees by age:

A. Surface mines

B. Common facilities

10. For calendar years 2016–2017 and to date, provide a distribution of employees by years of continuous service with the current employer.

A. Surface mines

B. Common facilities

11. For calendar year 2016–2017 and to date, provide a distribution of annual earnings by employees:

A. Surface mines

B. Common facilities

12. For calendar year 2016–2017 and to date, provide a distribution of employees by sex:

A. Surface mines

B. Common facilities

13. Provide a distribution of employees on lay-off by years of continuous service with Rockwell-Blackhawk for the year 2016–2017 and to date:

A. Surface mines

B. Common facilities

14. For calendar year 2016–2017 and to date, provide the following work force turnover information:

A. Numbers of retiring employees

B. Numbers of voluntary quits

C. Number of involuntary terminations

D. Number of recalls from any panel Rockwell/Blackhawk operations

E. Number of new hires

i. with experience

ii. without experience

15. For calendar year 2016–2017 and to date, provide the total cost of unemployment compensation insurance.

16. For calendar year 2016–2017 and to date, provide the total cost of workers' compensation insurance.

17. For calendar year 2016–2017 and to date, provide the total cost of black lung insurance.

18. For calendar year 2016–2017 and to date, provide the total amount of wages said for newly hired and experienced miner orientation.

19. For calendar year 2016–2017 and to date, provide the total amount of wages paid for newly hired and inexperienced miner orientation.

20. For calendar year 2016–2017 and to date, provide the total amount of wages paid for annual re-training.

21. For calendar year 2016–2017 and to date, provide the number of covered

employees, the number of total covered participants and the average monthly cost of the following benefits:

A. Hospital benefits

B. Physician services

C. Prescription drugs

D. Vision care services

E. Dental care

F. Life and accidental death and dismemberment insurance

22. For calendar year 2016–2017 and to date, provide the following data regarding sickness and accident benefits:

A. Number of employees receiving S & A benefits

B. Number of employees who exhausted all S & A benefits

C. Average length of S & A benefits

D. Total cost

E. Average cost per hour worked

23. Provide the monthly cost of employer-provided health, life and AD & D benefits since January 1, 2017 for working employees and state whether coverage is for:

i. Single employee

ii. Family coverage

24. Provide the projected monthly cost of employer-provided health, life and AD & D benefits as of January 1, 2017, for working employees and state whether the coverage is for:

i. Single employee

ii. Family coverage

25. For calendar year 2016–2017 and to date, provide the following health care utilization information for bargaining unit employees:

A. Number of primary beneficiaries

B. Number of carved participants, including dependents

C. Number of hospital in-patient visits

D. Number of hospital in-patient days

E. Total hospital in-patient claim dollars paid

F. Number of prescription drugs

G. Total prescription drug claim dollars paid

H. Number of physical visits

i. in hospital
ii. out of hospital

I. Total physician claims dollars paid

i. in hospital
ii. out of hospital

J. Number of out-patient visits

K. Total out-patient claims dollars paid

L. Number of emergency room visits

M. Total emergency room claims dollars paid

N. Number of diagnostic lab tests performed

O. Total lab test claims dollars paid

P. Number of diagnostic x-rays performed

Q. Total x-ray claims cost paid

26. Provide a list of all warranties held by the Employer, identifying each item of equipment held by warranty and the expiration date of the warranty.

Identify all new mines and facilities opened since January 1, 2017. For each such operation, specify:

A. Type of operation

B. Number of employees performing work of a classified nature

C. Number of exempt employees

27. Provide a listing of all companies that have operated mines or other facilities under a lease or license agreement (including a mining agreement) since January 1, 2017 where the production or work was performed in part or entirely for the Employer or an affiliate. The listing should include:

A. Name of operating company

B. Name and location of the operation

C. Annual tonnage produced

D. Average number of employees

E. Union affiliation of employees, if any

F. Type of arrangement (e.g., active, temporarily shut down, sealed and etc.)

28. For calendar year 2016–2017 and to date, provide a quarterly listing of the number of subcontracting jobs performed for the Employer where the total value of the subcontracted work exceeded $5,000.

A. Number of such contracts

B. Total cost of such contracts

C. Type of work performed

i. Transportation
ii. Repair and maintenance
iii. Construction
iv. Reclamation, including revegetation, fine grading and seeding

D. Reason for such subcontracting

E. Number of hours worked on each such subcontract

29. For all the subcontracted reclamation work listed above, specify:

A. Nature of reclamation work

B. Duration of contract

C. Number of employees

D. Job classification of employees

30. Provide the number of bargaining unit employees performing reclamation work on an annual basis for calendar year 2016–2017, and to date.

31. On an annual basis for calendar year 2016–2017, and to date, provide a record of coal sales by type of transaction:

A. Long term contracts (greater than five years)

B. Short term contract (less than five years)

C. Sport market

32. On an annual basis for calendar year 2016–2017, and to date, provide a record of coal sales in the following distribution:

A. Domestic sales

1. Electric utilities
2. Steel producers
3. Other industry

B. Canadian export

1. Electric utilities
2. Steel producers

3. Other industry

C. Overseas export

1. Electric utilities
2. Steel producers
3. Other industry

33. State the total amount of Coal which was purchased, either directly or indirectly, by the Employer in calendar year 2016–2017, and to date, the source of the purchased coal and the means by which the coal was purchased.

34. Provide the most recent budget or forecast on an annual basis for the years 2016–2017, and to date, including projections of the following categories of information:

A. Tons

B. Number of employees

C. Revenue

D. Net income

E. Labor cost per ton

F. Mines schedule to be opened, or operations expanded

G. Mines projected to be conveyed, assigned or transferred

35. For calendar year 2016–2017 and to date, please provide a quarterly list of contributions to any pension plan, savings plan and/or 401(k) account in effect for bargaining unit employees.

It is well established that information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). Paragraphs 1–4, 7, 8, 25, 30, and 35 specifically refer to "bargaining unit employees" and thus clearly request presumptively relevant information. The Respondent has not asserted any basis for rebutting the presumptive relevance of that information. Rather, the Respondent raises as an affirmative defense its contention, rejected above, that the Union was improperly certified. We find that the Respondent unlawfully refused to furnish the information sought by the Union in paragraphs 1–4, 7, 8, 25, 30, and 35.

Additionally, it is well established that although a union's information request might not be specifically limited to bargaining unit employees and therefore could be construed as requesting information pertaining to nonunit employees as well as unit employees, this does not justify an employer's blanket refusal to comply with the union's request. See *Superior Protection Inc.*, 341 NLRB 267, 269 (2004) ("an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply with the request to the extent it encompasses necessary and relevant information"), enfd. 401 F.3d 282 (5th Cir. 2005), cert. denied 546 U.S. 874 (2005); *Streicher Mobile Fueling*, 340 NLRB 994, 995 (2003) (failure to limit request to bargaining unit information did not excuse noncompliance with request as to unit employees), affd. mem. 138 Fed. Appx. 128 (11th Cir. 2005). In such cases, the Board will construe a request that seeks information that is otherwise presumptively relevant as pertaining to unit employees, even though the information requested is not consistently described in these specific terms. See, e.g., *Metro Health Foundation*, supra at 803 fn. 2 (partial denial of summary judgment on information request did not excuse failure to provide other, clearly relevant, information, which the Board construed to pertain to unit employees); *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003) (request for payroll records and benefit fund payments construed to pertain to unit employees). Accordingly, we find that the fact that paragraphs 5, 6, and 9–24 do not specifically refer to "bargaining unit employees" does not excuse the Respondent's failure to furnish the information requested in those paragraphs to the extent that they could be construed to pertain to unit employees. To the extent that those paragraphs pertain to nonunit employees, we deny summary judgment and remand them to the Regional Director for further appropriate action.

Paragraphs 26–29 and 31–34, however, request financial information, information concerning only nonunit employees, or other information that is not presumptively relevant. The pleadings fail to indicate why the Union needs that information or to otherwise indicate the relevance of that information. Therefore, we deny summary judgment with respect to paragraphs 26–29 and 31–34, and remand those issues to the Regional Director for further appropriate action.

For the reasons stated above, we grant the Motion for Partial Summary Judgment and order the Respondent to bargain with the Union and to furnish the Union with the information that it requested on February 28, 2018, with the exception of the information requested in paragraphs 5, 6, and 9–24 to the extent that those paragraphs pertain to nonunit employees and the information requested in paragraphs 26–29 and 31–34.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability corporation with an office and place of business in Wharton, West Virginia (the Respondent's facility), and has been engaged in the mining of coal.

In conducting its operations during the 12-month period ending June 1, 2018, the Respondent sold and shipped from the Respondent's facility goods valued in excess of $50,000 directly to points located outside the State of West Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on August 3, 2017, the Union was certified on February 16, 2018,[2] as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees, including mobile equipment operators, mechanics, welders, and oilers employed by the Employer at the Glancy Surface Mine located in Wharton, West Virginia; but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About February 28, 2018, the Union, by letter, fax, and email, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about March 1, 2018, the Respondent has failed and refused to do so.

About February 28, 2018, the Union requested that the Respondent furnish it with the information set forth above, which, except as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since March 1, 2018, the Respondent has failed and refused to furnish the Union with the relevant information.[3]

We find that the Respondent's conduct described above constitutes an unlawful failure and refusal to recognize and bargain with the Union and an unlawful failure and refusal to furnish requested information to the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since March 1, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union with requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union with the information requested on February 28, 2018, with the exception of the information requested in paragraphs 5, 6, and 9–24 to the extent that those paragraphs pertain to nonunit information and the information requested in paragraphs 26–29 and 31–34.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir.), cert. denied 379 U.S. 817 (1964).

---

[2] By unpublished order dated June 21, 2018, the Board denied the Respondent's request for review.

[3] The complaint alleges that about February 19, 2018, the Union, by letter and email, initially requested that the Respondent recognize and bargain with it and furnish it with the information set forth above. The Respondent's answer denies those allegations and contends that it did not receive the Union's February 19, 2018 requests. However, the Respondent's answer admits that it received the Union's identical February 28, 2018 requests and that it has failed and refused to bargain with or furnish the requested information to the Union since March 1, 2018. As a determination regarding the date on which the Respondent first received the Union's requests to bargain and to furnish information does not affect the remedy, we find it appropriate to rely on the Respondent's uncontested admission that it received the Union's bargaining and information requests on February 28, 2018, and has refused to bargain with or furnish the requested information to the Union since March 1, 2018. Accordingly, the Respondent's denials regarding the earlier requests do not raise issues of fact warranting a hearing.

ORDER

The National Labor Relations Board orders that the Respondent, Rockwell Mining LLC, Wharton, West Virginia, its officers, agents, successor and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Mineworkers of America, AFL–CIO, Region 2, District 12 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time production and maintenance employees, including mobile equipment operators, mechanics, welders, and oilers employed by the Employer at the Glancy Surface Mine located in Wharton, West Virginia; but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely manner the information requested by the Union on February 28, 2018, with the exception of the information requested in paragraphs 5, 6, and 9–24 to the extent that those paragraphs pertain to nonunit information and the information requested in paragraphs 26–29 and 31–34.

(c) Within 14 days after service by the Region, post at its Wharton, West Virginia facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 09, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2018.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 09 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that this case is remanded to the Regional Director for Region 09 for further appropriate action.

Dated, Washington, D.C. December 11, 2018

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with United Mineworkers of America, AFL–CIO, Region 2, District 12 as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

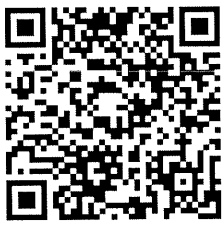
WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees, including mobile equipment operators, mechanics, welders, and oilers employed by us at the Glancy Surface Mine located in Wharton, West Virginia; but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on February 28, 2018, with the exception of the information requested in paragraphs 5, 6, and 9–24 to the extent that those paragraphs pertain to nonunit information and the information requested in paragraphs 26–29 and 31–34.

ROCKWELL MINING LLC

The Board's decision can be found at https://www.nlrb.gov/case/09-CA-216001 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROCKWELL MINING LLC

Employer

and Case 09-RC-202389

UNITED MINE WORKERS OF AMERICA
INTERNATIONAL UNION, AFL-CIO

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Supplemental Decision and Certification of Representative is denied as it raises no substantial issues warranting review.[1]

MARK GASTON PEARCE, MEMBER

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., June 21, 2018.

---

[1] In denying review, we do not rely on the Regional Director's citation to *The Permanente Medical Group, Inc.*, 358 NLRB 758 (2012), a recess-Board decision. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014).

We agree with the denial of the Employer's request for review here. Member Pearce finds that even if all the conduct alleged as objectionable had taken place during the critical period, it would not have merited setting aside the election.

Members Kaplan and Emanuel note, however, that this case suggests there may be an important issue to be considered in a future case about whether the Board's critical period policy established in *Ideal Electric and Mfg. Co.*, 134 NLRB 1275 (1961), adequately protects employees from election interference by coercive threats, as opposed to mere campaign misrepresentations, made immediately prior to the filing of an election petition. This concern may be greater in light of the shortened critical periods resulting from the Board's 2014 election rule changes.

Member Pearce notes that the 2014 election rule changes did not affect the Board's ability to set aside an election when a party engages in "clearly proscribed prepetition activity likely to have a significant impact on the [Board] election." See *Royal Packaging Corp.*, 284 NLRB 317, 317 (1987); *Lyon's Restaurants*, 234 NLRB 178, 179 (1978).

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

ROCKWELL MINING LLC

Employer

and

Case 09-RC-202389

UNITED MINE WORKERS OF AMERICA
INTERNATIONAL UNION, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a stipulated election agreement, an election was conducted on August 3, 2017 [1]/, among a unit of "All full-time and regular part-time production and maintenance employees, including mobile equipment operators, mechanics, welders, and oilers employed by the Employer at the Glancy Surface Mine located in Wharton, West Virginia; but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act." The tally of ballots showed that 27 ballots were cast for Petitioner and that 25 ballots were cast against representation. There was one non-determinative challenged ballot. [2]/ Thus, a majority of the valid ballots were cast in favor of representation by the Petitioner.

The Employer timely filed three objections to the election and pursuant to my direction a hearing was conducted before a Hearing Officer on August 24, concerning these objections. Following the hearing on the objections, the Hearing Officer issued a report recommending that all three objections be overruled. The Employer filed exceptions to the report contending that the Hearing Officer erred in recommending that each objection be overruled. The Employer also excepted to the Hearing Officer's conclusion that employee Jerry Hagar's status as a "special agent" for the Union ended after getting cards signed and asserted a "double standard [was] applied by the Hearing Officer to the testimony of the witnesses." The Employer filed a brief in support of its exceptions and the Petitioner filed a brief in opposition to the Employer's exceptions.

---

[1]/ Hereinafter, all dates refer to the year 2017 unless otherwise stated.

[2]/ Two ballots were challenged at the time of the election. However, the Regional Director Decision on Challenged Ballots, Order Directing Hearing and Notice of Hearing on Objections, disposed of one challenged ballot as both parties agreed that the employee was not eligible to vote in the election. Accordingly, only one challenged ballot remained, and it is no longer determinative.

EXHIBIT C

On October 20, I issued an Order remanding Objection No. 1 to the Hearing Officer with instructions for him to make specific credibility resolutions and factual findings and to apply relevant case law to those factual findings. I reserved ruling on all Objections and pending exceptions until after issuance of the Hearing Officer's Supplemental Report and the filing of any additional timely exceptions thereto.

Thereafter, on December 21, the Hearing Officer issued a Supplemental Hearing Officer's Report on Objections in which he made credibility rulings and findings of fact and recommended overruling Employer's Objection No. 1. The Employer filed timely exceptions, including a brief in support thereof, to this Supplemental Report on Objections contending that Objection 1 should have been sustained and the election set aside.

I have carefully reviewed the Hearing Officer's rulings made at hearing and find they are free from prejudicial error. [3]/ After a thorough examination of the entire record of these proceedings, including the briefs and the exceptions to both the initial Hearing Officer's Report on Objections and the Supplemental Hearing Officer's Report on Objections, for the reasons given below, I agree with Hearing Officer's recommendations to overrule Objections 1, 2 and 3. Accordingly, I am issuing a Certification of Representative.

OBJECTION NO. 1

In this objection, Employer contends that, prior to the petition being filed, the Petitioner, through an employee "in-house organizer," Jerry Hagar, offered employees a conditional benefit and made threats of discrimination directed at employees who did not sign authorization cards. This objection relates to statements made by Hagar to employees while he solicited their signatures on authorization cards, on a night before the petition was filed, between 3:00 a.m. and 3:30 a.m., with approximately 13-24 employees present. On this occasion, Hagar and fellow employees met outdoors, a couple miles from the Employer's worksite, promptly after the night shift ended. The Hearing Officer concluded that Hagar was a "special agent" of Petitioner for the limited purpose of assessing the impact of the statements he made concerning purported union policies

[3]/ Similarly, I find no merit to the Employer's exception that the Hearing Officer harbored a bias against the Employer or applied a "double standard" in assessing the credibility of the Employer's witnesses. In this regard, the Employer appears to claim that the Hearing Officer was biased because he referred to the testimony of Robert Tackett as noteworthy because it was in response to an open-ended question while failing to denote any Employer's witnesses' testimony as noteworthy. The Employer's claim is wholly unfounded, inasmuch as the Hearing Officer subsequently discredited Tackett, and found the testimony of certain Employer witnesses credible. The Employer's other basis for accusing the Hearing Officer of bias or applying a double standard was due to the Hearing Officer's finding that Hagar's statement did not persist in the minds of employees. The fact that the Hearing Officer has ruled against a party does not in itself manifest bias against the losing party, and, upon a review of the record and his Reports, I find no hint of bias present in the record before me.

during the course of soliciting. Neither party excepts to the Hearing Officer's finding of special agency status during this gathering. [4]/

As the Hearing Officer correctly found, it is well established Board law that generally when deciding whether to set aside an election based on party conduct, the Board must determine if the contested conduct occurred during the critical period and has the tendency to interfere with the employees' freedom of choice. This test is an objective one, such that the determination does not turn on whether the employees were in fact coerced but rather whether the party's misconduct reasonably tended to interfere with employees' freedom of choice in the election. *Cedars-Sinai Medical Center*, 342 NLRB 596, 597 (2004) citing *Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995); *Hopkins Nursing Care Center*, 309 NLRB 958 (1992). The critical period is defined as the date the petition was filed to the date of the election, and, therefore, the date of filing the petition is, "the cutoff time in considering alleged objectionable conduct in contested cases." *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275, 1278 (1961).

However, as I noted in my Order Remanding, in very limited circumstances, the Board has held that pre-petition conduct during the solicitation of union authorization cards could constitute objectionable conduct warranting setting aside an election. For example, in *Gibson's Discount Center*, 214 NLRB 221 (1974), the Board found that a pre-petition offer to waive initiation fees if employees signed union authorization cards grounds for a valid objection to an election, in accord with *Savair Manufacturing Co.*, 414 US 270 (1973), in which a union's pre-petition waiver of initiation fees to those who executed a recognition slip was found objectionable. See, *Royal Packaging Corp.*, 284 NLRB 317 (1987) (the Board found a pre-petition offer from an employee, who was an admitted union agent and whose husband was a supervisor and union supporter, to obtain the reinstatement of an employee's daughter if the employee and daughter signed union cards objectionable because the employees reasonably believed the union could bring about the reinstatement). Additionally, in *Lyon's Restaurants*, 234 NLRB 178 (1978), the Board found that a shop steward's pre-petition threat to employees that they would not work if they did not sign a union card, in the context of a prior bargaining history between the employer and a sister union, was objectionable.

The record in this matter reflects that at the hearing numerous employees testified to their varying recollections regarding what Hagar stated during this early morning meeting and some of this testimony was contradictory. In his Supplemental Report, the Hearing Officer concluded that "*Hagar, while soliciting authorization cards at the employee meeting prior to the petition being filed, told employees that if they did not sign authorization cards,* ***they would not be protected or covered by the Union if something bad happened.***" (Emphasis supplied) He found this particular statement was made via his observation of each witnesses' demeanor and because there was corroboration by several witnesses. Moreover, to the extent that testimony, even by witnesses whom were

---

[4]/ The Employer excepts to the Hearing Officer's finding that Hagar was not an agent beyond the period in which he solicited authorization cards. I adopt the Hearing Officer's findings for the reasons articulated in his initial Report and note that it is the burden of the party asserting agency status to prove its existence. *El Paso Electric*, 355 NLRB 428 (2010); *Millard Processing Services, Inc.*, 304 NLRB 770 (1991).

credited by the hearing officer, diverged from the aforementioned statement, that divergent testimony was implicitly discredited.

The Employer excepts, on a variety of grounds, to the Hearing Officer's recommendation that Objection 1 should be overruled. [5]/ One such ground urged by the Employer is that the Hearing Officer erred in discrediting employee Allen Pruett's testimony in which Pruett recalled that Hagar told employees they did not have to sign the cards but if they did not, "*and the job goes Union* and if you lose your job or you have problems" the Petitioner will not support you or represent you. In discrediting Pruett's testimony, the Hearing Officer attributed great weight to the fact that Pruett's testimony diverged from the testimony provided by witnesses whom he credited, and that no other witness corroborated this specific testimony. In considering this exception, I note that it is well established Board policy not to overturn a hearing officer's credibility resolutions unless the clear preponderance of all relevant evidence demonstrates that those findings are incorrect. *Independence Residences, Inc.*, 355 NLRB 724 (2010) fn. 1; *Ozark Refining and Casting*, 240 NLRB 475 (1979). It is further well established Board law that one part of a witnesses' testimony can be credited while another aspect of that testimony is discredited. [6]/ In this connection, I have carefully examined the entire record and find no evidentiary basis or support for reversing this, or any, credibility resolution made by the Hearing Officer.

The Employer also makes several interwoven arguments contending that the Hearing Officer ignored alleged post-petition activity and statements made by the Petitioner and asserting that this conduct lends support to finding Hagar's statement, alleged in Objection 1, warrants setting aside the election. [7]/ However, a fair reading of

---

[5]/ The Employer filed several Exceptions and within each Exception are numerous "specific exceptions" and arguments in support thereof. All of the Employer's exceptions are interrelated. Ultimately, the Employer is excepting to the Hearing Officer's recommendation to overrule Objections 1, 2 and 3. I have considered each exception, interrelated exception and supporting argument. Although I have not specifically addressed each exception and argument in this decision, inasmuch as they are interrelated, my findings will explain the reasoning behind my decision to adopt the Hearing Officer's recommendations.

[6]/ It has long been held that a fact finder may credit one portion of a witness' testimony and discredit another portion of that testimony. *Service Employees Local 1877 (American Building Maintenance)*, 345 NLRB 161 fn. 1 (2005); *Universal Camera Corporation*, 179 F.2d 749, 754 (2d Cir. 1950).

[7]/ In this regard, the Employer argues in its brief with respect to Objection 1, that the Hearing Officer, "ignores the impact of his credibility findings on what these five employee witnesses' said about other union threats made during the post-petition period . . . ignores that credible employee witness Osborne also testified about threats of job loss made by the UMWA representative in a home visit . . . ignores the testimony of two credible employee witnesses, Escheagaray and Blackburn, who were also told by UMWA agent Hagar, that the Union would disclose the names of card signers to the Employer following the election. . . ."

both Hearing Officer's Reports shows that he did not ignore these points, but rather, found that the Petitioner did not make the objectionable statements as alleged in Objections 2 and 3. Thus, his failure to rely on those alleged statements/conduct to bolster Objection 1 is entirely proper.

The Employer further excepts to the Hearing Officer's legal conclusion that Hagar's statement constituted pre-petition propaganda and not objectionable conduct under *Savair*, above, and its progeny. In adopting the Hearing Officer's conclusion, I note that although the Board has found pre-petition conduct grounds for a sustainable objection, it is clear that when carving these exceptions, the Board emphasized the validity of the general policy that for contested conduct to be deemed objectionable it must occur within the critical period, holding in *Gibson's Discount Center,* that it did not, "intend any broad departure from the *Ideal Electric* rule." *Gibson's* supra at 222, fn. 3. See also, *The National League of Professional Baseball Clubs,* 330 NLRB 670, 676 (2000) (Board noted that although it "will consider prepetition conduct that is directly related to postpetition conduct, it is also well established that the Board will generally not set aside an election based solely on conduct which occurred prior to the petition."); *Stericycle, Inc.*, 357 NLRB 582 (2011). The Employer maintains that when viewing this matter I should consider the shortened time frame between the filing date of the petition and the holding of the election, as compared to the generally longer time period that occurred before the Board implemented new representation rules in 2015. However, I am unaware of any authority, and none is cited to by the Employer, that has either extended the critical period beyond the date the petition is filed due to this "speedy" process, or that has held that the Board should more readily break with the general policy established in *Ideal Electric*.

A review of the relevant, afore-cited case law persuades me that for a departure from the *Ideal Electric* rule to take place the statement or inducement in the garnering of signed authorization cards must be, "clearly proscribed activity likely to have a significant impact on the election." *Royal Packaging Corp.*, 284 NLRB 317, 317 (1984). Here, I conclude that Hagar's statement does not rise to "clearly proscribed activity." Hagar's statement, as found by the Hearing Officer, is, at best, ambiguous, open to various interpretations, especially when compared to those unambiguous statements made in cases in which the Board has found the pre-petition activity proscribed. For example, Hagar's remark could mean that if employees did not sign a card and the Petitioner became the employees' representative, then the Petitioner would choose not to represent those who failed to sign or it could also reasonably be interpreted by employees as meaning that if employees did not sign authorization cards the natural consequence would be that the Petitioner will not become the employees' bargaining representative and hence unable to represent or "cover" employees if something bad happens. Therefore, I conclude that such an ambiguous statement does not amount to a threat or a promise reasonably tending to interfere with employees' freedom of choice, and moreover, it is certainly not so clearly proscribed as to require that I deviate from the *Ideal Electric* general rule that only post-petition conduct can be used to set aside an election.

Similarly, in agreement with the Hearing Officer, Hagar's statement is distinguishable from the promises of benefit which were at issue in *Savair* and *Royal*

Packaging and the threat contained in *Lyon's Restaurants*, 234 NLRB at 178. In particular, in *Lyons* two employees were told, before the critical period, that if "they did not join [p]etitioner they would not work." Due to the unique circumstances presented in that case, this was a threat that the Board found employees may well have reasonably believed the union could carry out. In holding that this pre-petition remark was worthy of setting aside the election, the Board noted that the nature of the threat was, "related to the serious topic of the employees' job security." In contrast, the nature of Hagar's equivocal statement did not implicate employees' job security and I concur with the Hearing Officer that it cannot be compared to that at issue in *Lyon's Restaurants,* supra. Based on the foregoing, and the analysis provided by the Hearing Officer, I conclude that Hagar's statement, since it was made outside of the critical period, and does not constitute a clearly proscribed activity likely to have a significant impact on the election, is not objectionable.

Given my decision that this pre-petition activity cannot be relied upon in setting aside the election, analyzing this matter under *Taylor Wharton Division Harsco Corporation*, 336 NLRB 157 (2001) is unnecessary. However, in the event the Board disagrees with my decision that this matter does not fall within a *Savair* exception, I further conclude, in accord with the Hearing Officer's Reports, that Hagar's statement did not reasonably tend to interfere with employees' free and uncoerced choice in the election under the *Taylor Wharton* test, that was fully described in the Hearing Officer's initial Report. [8]/ In so concluding, I give significant weight to the Hearing Officer's determination, which was supported by the record, that this pre-petition statement was not so severe as to likely cause fear among employees and that this particular statement did not persist in the minds of bargaining unit employees.

OBJECTION 2

In Objection 2 the Employer contends that, in the lead up to the election, Petitioner's agents told employees that after the election ended, the Employer would learn the identities of the card signers, and the only way for employees to protect themselves when the Employer began discharging them was for all employees to vote yes in the election. In support of this Objection employee Zachary Osborne testified that he received a text message telling him that if the Petitioner was not voted in, they know that everybody on the night shift had signed cards and that night shift employees would be the first to go, and then they would phase out day shift. Osborne did not identify the sender

---

[8]/ However, I believe when the Hearing Officer analyzed the statement under the multi-factored test in *Taylor Wharton*, he incorrectly considered factor (7). He held that there was no evidence the Union engaged in misconduct in attempting to cancel out Hagar's purported misconduct and then weighed that factor in favor of finding the statement not objectionable. With respect to this factor, the Board would consider the effect of any misconduct of the "opposing party" to cancel out the effects of the original misconduct. *Taylor Wharton* at 157. Here, the opposing party would be the Employer and there was no evidence of Employer misconduct to counterbalance that attributed to the Union, and thus, this factor would weigh in favor of finding the statement objectionable. Nevertheless, my decision regarding this one factor does not change my ultimate conclusion that, considering all the factors, Hagar's statement did not tend to interfere with employees' free choice.

or author of the text, or the date he received it and a copy of the text was not presented as evidence at the hearing. The Hearing Officer correctly concluded that there was no evidentiary basis for attributing either the authorship or sending of the text to Petitioner.

Additionally, employee Juan Echeagaray testified that Hagar and two unidentified persons, during the early morning meeting wherein cards were solicited, said that after the Petitioner was voted in the Employer might be given access to the cards. Another employee, Ethan Leedy, recalled that at this same meeting, Hagar informed employees that after the Petitioner was voted in the Employer would see the cards. Employee Ricky Blackburn testified that he heard rumors about the Employer eventually obtaining the signed authorization cards but did not say from whom he heard these rumors. Thereafter, on July 12, the Petitioner held a meeting for employees during which Petitioner's representative Brian Lacy made clear that the Employer would never have access to the signed authorization cards and this was also said by Petitioner's representatives to employees during home visits. It appears that the Employer held a meeting for employees as well, after Hagar made comments about the Employer's access to cards, wherein, "Rockwell made an effort to tell employees no one would find out who signed cards or how employees voted." [9]/

In recommending overruling Objection 2, the Hearing Officer determined that Hagar's statement as described above, if said, was a pre-petition misstatement, which was not rejuvenated during the critical period. He also found that Petitioner clarified to employees in attendance at a meeting and during home visit(s) that the Employer would not have access to the cards. The Employer excepts to the Hearing Officer's conclusion that: (1) Petitioner corrected any misunderstandings; (2) that the objection was illogical; (3) there was evidence Petitioner representative Brian Lacy conclusively dispelled the employees fears; and (4) Hagar's misstatements would not influence voters at election time.

Regarding these exceptions, it is accurate that the Hearing Officer, in his report, did remark that, "At first blush, the allegedly objectionable conduct seems illogical," and explained his belief that such a statement that the Employer might, or could, have access to the cards would have the tendency to discourage employees from signing a union authorization card. Nonetheless, he analyzed whether Hagar's statements "taken at face value" were objectionable and concluded they were not, for the reasons cited above.

In its brief, the Employer maintains that Petitioner's subsequent statements to employees that the Employer would not see the cards did not fully dispel employees' fears, correctly pointing out that not all employees were in attendance at this union meeting and arguing that it was Petitioner's "burden to correct Hagar's misinformation on this issue." The Employer pointed to *Brown Steel*, 230 NLRB 990 (1977) for the proposition that Hagar's statements that the Employer might, or would, see the union cards were indeed objectionable. However, a primary reason that Hagar's statement is not objectionable is because, as the Hearing Officer concluded, his statement constituted a mere misstatement. It is well established that the Board will not set aside elections on the basis of false or misleading campaign statements. See, *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1982); *Virginia Concrete Corp., Inc.*, 338 NLRB

[9]/ Employer's first brief, page 22.

1182 (2003) (employer's statement that union's ULP charge would result in employees losing a wage increase and was an attempt by the union to take away the wage increase was a possible misstatement of Board law and future Board action but was not objectionable); and *The Permanente Medical Group, Inc.*, 358 NLRB 758, 760 (2012). Consequently, contrary to the Employer's assertion, there is no obligation on a party to correct untruths. Moreover, this misstatement occurred prior to the filing of the petition. As I previously discussed in great detail, apart from very rare circumstances, the Board will not find conduct that occurs outside of the critical period to be objectionable.

Moreover, the Employer's reliance on *Brown Steel*, is misplaced. In that case, the union agent said, within days of the election, that there was a new set of ground rules in effect, and that if the union lost the election, the names of those who had signed cards would be supplied to the Employer and posted on the bulletin board. The union was clearly making the anonymity of card signers contingent on employees voting in favor of the union. In the instant matter, Hagar's statement may have been inaccurate but there is no evidence that he was warning that the Union would disclose the cards in response to a particular election outcome or in response to how employees voted. The facts presented before me are wholly distinguishable from those presented in *Brown Steel*. Accordingly, I adopt the Hearing Officer's recommendation and overrule Objection 2.

OBJECTION 3

The Employer maintains in this Objection that shortly before the election, Petitioner's agents threatened employees with job loss and lay-offs, citing past personal experiences, should the Petitioner not prevail in the election. The Employer, in support of this objection, relies on testimony from employees that Petitioner representatives Floyd Conley and/or Josh King made statements to the effect that if employees did not vote for the Petitioner more than likely all employees who were employed during the organizing campaign would be weeded out and replaced. I adopt the recommendation to overrule Objection 3 for the reasons cited by the Hearing Officer. [10/]

The Board has long found that in cases where alleged threats are not within a party's power to carry out, and can be evaluated by employees as such, the threats will not serve to set aside an election. In this connection, in *The Permanente Medical Group., Inc.*, infra the Board found that a union's threats that if the competing union were successful the employer would deprive employees of certain benefits including raises and bonuses, were not objectionable. In so finding, it held, "Even assuming that the [union's] statement could

---

[10/] Regarding the exception that the Hearing Officer incorrectly concluded that Conley's statements concerning job loss did not influence employee Tike Green because Green had his mind made up by the time he received Conley's phone call. It is unclear from the testimony whether Green's mind was made up by the time he received Conley's phone call, as the Hearing Officer determined, or sometime thereafter. Regardless of whether Green's mind was decided before receiving this call, it does not alter my decision to adopt the Hearing Officer's determination that this alleged party conduct was not objectionable for the reasons articulated herein and in his Report. Moreover, the standard is an objective one, such that the determination does not turn on whether employees were in fact coerced but rather whether the party's misconduct reasonably tended to interfere with employees' freedom of choice. *Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995).

be construed as 'threats' rather than as predictions of what the Employers might do based on past conduct, [the union] manifestly had no power to carry out such threats. It is well established that the Board will not find a threat by a party to be objectionable unless the party has the ability to carry out the threat." *Id.* at 759-760. See also, *Rio de Oro Uranium Mines, Inc.*, 120 NLRB 91, 94 (1958); *Cal-Style Furniture Mfg. Co.*, 235 NLRB 1527, 1530 (1978).

In adopting the Hearing Officer's recommendation to overrule this objection, I agree with his conclusion that it was obvious that Petitioner representatives Josh King and Floyd Conley were in no position to postulate what the Employer might do in response to the election. More importantly, as in *The Permanente Medical Group*, supra, it was evident that Petitioner had no ability to carry out this speculation. Thus, as fully outlined by the Hearing Officer, even if King or Conley made the various statements attributed to them that if employees did not vote for Petitioner more than likely all employees who were employed during the organizing campaign would be weeded out and replaced; or when an organizing campaign at another employer was unsuccessful the employees were weeded out and replaced the record fails to show that these were threats within the Union's power to carry out.

The statements involved in the present matter can be easily distinguished from those in *Robello Excavating Contractors,* 219 NLRB 329 (1975) and *Knapp-Sherrill Co.*, 171 NLRB 1547 (1968), relied upon by the Employer. In *Robello Excavating*, a steward told an employee, "you may have a good chance to lose the books if you vote against the Union," and the evidence established the union had indeed removed members from the books in the past and that a loss of a union book would shut the employee out of obtaining union jobs from the hall. In *Knapp – Sherrill Co.*, the Board found the union made clear to employees that it was proposing to represent members differently from other employees. Thus, in both cases cited by the Employer, the unions had the power to effectuate the threats that it made to employees. In the case before me, Petitioner did not possess such power thereby making those cases inapposite to the facts here. Based on the foregoing and the record as a whole, I adopt the Hearing Officer's recommendation to overrule Objection 3.

I. CONCLUSION

Based on the above and having carefully reviewed the entire record, including the hearing officer's reports and recommendations, and the exceptions and arguments made by the Employer in its brief, I overrule the objections, and I shall certify the Petitioner as the representative of the appropriate bargaining unit.

II. CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for the United Mine Workers of America International Union, AFL-CIO and that it is the exclusive representative of all the employees in the following bargaining unit:

> All full-time and regular part-time production and maintenance employees, including mobile equipment operators, mechanics, welders, and oilers employed by the Employer at the Glancy Surface Mine located

in Wharton, West Virginia; but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

III. REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **March 2, 2018.** If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: February 16, 2018

Garey Edward Lindsay, Regional Director
National Labor Relations Board Region 09
550 Main Street Room 3003
Cincinnati, OH 45202-3271

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROCKWELL MINING, LLC, Petitioner, v. NATIONAL LABOR RELATIONS BOARD, Respondent.	)	Case No: NLRB Case Nos. 09-CA-216001; 09-RC-202389

PROOF OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 15(c) and 25(b), I hereby certify that true and correct copies of the foregoing *Rockwell Mining, LLC's Petition for Review of Decision and Order of the National Labor Relations Board*; *Corporate Disclosure Pursuant to Cir. R. 26.1* and this *Proof of Service* were served on the following via First-Class Mail postage fully pre-paid on this December 12, 2018.

Zuzana Murarova, Esq.
Garey Edward Lindsay, Esq., Regional Director
National Labor Relations Board, Region 9
John Weld Peck Federal Building, Room 3003
550 Main St., Cincinnati, OH 45202-3271

Gary Trout, Region II Director
United Mine Workers of America International Union, AFL-CIO
1300 Kanawha Blvd., E.
Charleston, WV 25301-3001

Brian Lacey, International Representative
International Union, UMWA, AFL-CIO
2306 S. Fayette Street
Beckley, WV 25801-6935

/s/Jacqueline N. Rau
Jacqueline N. Rau (OH #89899)
DINSMORE & SHOHL LLP
191 Nationwide Blvd, Suite 300
Columbus, Ohio 43215
(614) 628-6883
(614) 628-6890 (Facsimile)
jacqueline.rau@dinsmore.com

Counsel for Petitioner

14304916v1